

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEORGE BALCEWICZ, III,

Plaintiff,

v.

Case No. 18-10294
Honorable Victoria A. Roberts

UNITED STATES OF AMERICA,

Defendant.

**ORDER GRANTING DEFENDANT'S MOTION TO
DISMISS [Doc. 4] AND DISMISSING THE COMPLAINT**

On January 25, 2018, Plaintiff George Balcewicz, III filed a *pro se* complaint against the United States of America ("Defendant") using this Court's form Complaint for a Civil Case.

Under the "Basis for Jurisdiction" section, Plaintiff indicated the Court has federal question jurisdiction. When asked to list the federal statutes, federal treaties, and/or provisions of the United States Constitution at issue, Plaintiff answered, "TAXES" and "SETTLE BACK TAXES AND OTHER DEBT ALONG WITH IT." [Doc. 1, PgID 4].

For the "Statement of Claim" section, Plaintiff alleged: "I tried to make an offer to Internal Revenue Service in order to deal with my back taxes but it was denied. The District Courts are the only one that can modify. I would like to present my case to the Courts in the same way that I would have presented it to the IRS in an offer in compromise." [*Id.*, PgID 5 (original in all capital letters)]. For relief, Plaintiff seeks "back taxes with IRS along with an [sic] restitution that was assessed with court proceedings." [*Id.*, PgID 6 (original in all capital letters)].

On March 26, 2018, Defendant moved to dismiss the complaint for lack of subject matter jurisdiction and for failure to state a claim. Among other things, Defendant says Plaintiff has not alleged a waiver of sovereign immunity allowing him to bring this action against the United States, that no waiver of sovereign immunity exists that would allow this case to proceed, and that this Court is not an appropriate forum for Plaintiff to challenge the denial of his offer in compromise.

Plaintiff's response to the motion to dismiss was due April 19, 2018. That date has passed, and Plaintiff has not filed a response. The grounds Defendant sets forth for dismissing Plaintiff's complaint have merit.

To proceed against the United States or an agency of the United States – such as the Internal Revenue Service (“IRS”) – a plaintiff must identify a waiver of sovereign immunity expressed in statutory text. *Lane v. Pena*, 518 U.S. 187, 192 (1996); *Reetz v. United States*, 224 F.3d 794, 795 (6th Cir. 2000). Here, however, Plaintiff's complaint fails to allege a waiver of sovereign immunity and fails to allege sufficient facts to state a plausible claim for relief as required by *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009).

Moreover, Plaintiff does not allege whether, or when, he appealed the denial of his offer of compromise with the IRS Office of Appeals, as required by 26 U.S.C. § 7122(e) and 26 C.F.R. § 301.7122-1(f)(5), see *United States v. Kadunce*, No. 07-1704, 2008 WL 4678686, at *4 (W.D. Pa. Oct. 20, 2008). District courts generally lack jurisdiction to review the IRS's denial of an offer in compromise. See *id.*; *Cherbanaeff v. United States*, 77 Fed. Cl. 490, 496-97 (2007), *aff'd*, 300 Fed. Appx. 933 (Fed. Cir. 2008), (explaining that the “statutory and regulatory provisions that deal with offers in compromise provide solely for an appeal to the IRS Office of Appeals”); *Asemani v. United States*, No. 04-0846, 2004 WL 2649718, at *2-3 (M.D. Pa. Oct. 19, 2004)

(holding that no jurisdictional basis exists for a district court to review a denial of an offer in compromise). Plaintiff fails to allege any exception to this rule applies here.

Accordingly, the Court **GRANTS** Defendant's motion to dismiss and **DISMISSES** the Complaint for lack of subject matter jurisdiction.

IT IS ORDERED.

S/ Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: April 25, 2018

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on April 25, 2018.

s/Linda Vertriest
Deputy Clerk